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IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

No. 584

QUINN K. SMITH,

Petitioner

vs.

INDEMNITY INSURANCE COMPANY
OF NORTH AMERICA,

Respondent

BRIEF OF RESPONDENT IN OPPOSITION TO APPLICATION FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT.

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Shreveport, Louisiana

LECOMTE, SHREVEPORT, LOUISIANA

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MAY IT PLEASE THE COURT:

We find it extremely difficult to determine upon what grounds petitioner here believes this case warrants granting of certiorari by the Supreme Court of the United States.

Rule 19 of the Rules of the Supreme Court of the United States, in general, points out the character of cases which this Court considers warrants the issuance

of certiorari. By no stretch of the imagination does this case come anywhere near presenting any question of law at all, much less a question of law of public importance.

This suit is a common, garden variety damage suit. It was tried in the District Court before the Judge sitting without a jury. The District Judge found as a fact that the defendant's driver was not negligent and that the accident forming the basis of the suit was caused by the sole negligence of plaintiff. Not a single question of law was involved. Admittedly the case came within Article 2315 of the Civil Code of Louisiana,(1) the basic law of the State permitting recovery in damage cases. The case was in the District Court by virtue of diversity of citizenship.

On appeal to the United States Court of Appeals for the Fifth Circuit, that Court, at 245 Fed. 2d 464, affirmed the judgment of the District Court. The Court of Appeals found the judgment of the District Court not only not manifestly erroneous, but found it correct and approved the findings of fact and of law of the District Judge.

The tenuous effort on the part of petitioner to eke out a basis for the application of the doctrine laid down by *Erie R. Co. v. Tompkins, 304 U. S. 64, 82 L. Ed. 1188* to this case is futile. Petitioner persists in misconstruing the decision of the Supreme Court of Lou-

(1) Civil Code Art. 2315 of Louisiana reads: "Every act whatever of man that causes damage to another, obliges him by whose fault it happened to repair it; ***".

isiana in *Booth v. Columbia Casualty Co., 227 La. 932, 80 So. 2d 869*, as establishing a rule of law, binding in all respects under any and all circumstances and sets of facts. As pointed out by the Court of Appeals in this case, all the Supreme Court of Louisiana did in that case was find the facts in *that* case, which, of course, can have no effect on the trier of facts as to the facts he may find in a subsequent case between different parties and involving different circumstances. As aptly said by the Court of Appeals, the decision of an appellate court of Louisiana involving one state of facts does not convert a fact determination in a particular case into a rule of decision binding the triers of facts in subsequent cases to decide them in the same way.

If this Courts sits to review the facts in every damage suit where plaintiff fails to prevail there would be no end to the demands upon the time and patience of this Court. This Court has consistently held that it will not grant a writ of certiorari to review evidence or the inferences to be drawn therefrom, or discuss specific facts.

> *Chicago Junction Railway Co. v. King*, 222 U.S. 222, 56 L. Ed. 173;
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> *Boehmer v. Pennsylvania Railroad Co.*, 252 U.S. 496, 64 L. Ed. 680;
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> *United States v. Johnston*, 268 U.S. 220, 69 L. Ed. 925;
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> *General Talking Picture Corp. v. Western Electric Co.*, 304 U.S. 173, 82 L. Ed. 1273.

Merely a question of fact being involved in this cause, it is respectfully submitted that the petition for writs of certiorari should be denied.

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